

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
September 16, 2008 Session

**STATE OF TENNESSEE v. JUDY WOODALL**

**Direct Appeal from the Criminal Court for Wilson County  
No. 07-0458 J.O. Bond, Judge**

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**No. M2008-00368-CCA-R3-CD - Filed March 2, 2009**

Appellant, Judy Woodall, appeals the criminal court's order dismissing her appeal from general sessions court for failure to appear and prosecute. Following our review of the record and applicable law, we reverse the criminal court's order of dismissal and remand the case to criminal court for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed and Remanded**

J.C. McLIN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and ROBERT W. WEDEMEYER, JJ., joined.

Mark W. Henderson, Mt. Juliet, Tennessee, for the appellant, Judy Woodall.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; Tom P. Thompson, Jr., District Attorney General; and Brian W. Fuller, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Background**

The record in this case reflects that the appellant was convicted in general sessions court of resisting arrest, in violation of Tennessee Code Annotated section 39-16-602, a Class B misdemeanor. Appellant was sentenced to 11 months and 29 days, suspended after service of five days.<sup>1</sup> Appellant filed a timely notice of appeal to criminal court, demanding a jury trial. Appellant's case was placed on the criminal court's docket for an initial appearance on September 10, 2007, and she failed to appear at the appointed time. On September 12, 2007, appellant's case was dismissed by the criminal court and the case was remanded to general sessions court for

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<sup>1</sup> We note that the authorized term of imprisonment for a Class B misdemeanor is not greater than six (6) months or a fine not to exceed five hundred dollars (\$500) or both. Tenn. Code Ann. § 40-35-111(e)(2).

enforcement of judgment for failure to appear in criminal court and prosecute. Local rule of court also provided for a remand.<sup>2</sup>

## II. Analysis

On appeal, appellant argues and the state concedes that the criminal court erred by dismissing appellant's de novo appeal and remanding the case to general sessions court for enforcement of judgment, and we agree.

Tennessee Code Annotated section 27-5-108(a)(1) states: "[a]ny party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with the provisions of this chapter." Section (c) states that: any appeal shall be heard de novo in the circuit court.

The appellant is entitled to a re-examination of the whole matter in a de novo review and the circuit court is not concerned with what took place in the lower court; the matter is tried as if no other hearing had occurred. *Richards v. Taylor*, 926 S.W.2d 569, 570 (Tenn. App. 1996), *Hohenberg Bros. Co. v. Missouri Pacific R.R. Co.*, 586 S.W.2d 117, 119 (Tenn. App. 1979).

In a similar case, *State v. Weinbarger*, 70 S.W.3d 99 (Tenn. Crim. App. 2001) this court held that a de novo review requires a re-examination of the whole matter, stating, "[a] de novo hearing encompasses more than just the presentation of proof. The court must try the matter and render judgment as if no judgment had been previously rendered," *Id.* at 101-02 (quoting *State v. Cunningham*, 972 S.W.2d 16, 18 (Tenn. Crim. App. 1998)).

In the case sub judice, there is no allegation that the appellant did not comply with the provisions of Tennessee Code Annotated § 27-5-108 as enacted by the legislature of this state. The appellant was convicted in general sessions court, perfected her appeal to criminal court, but failed to appear and prosecute on the date scheduled by the criminal court. Rather than issue a capias for the appellant's arrest, the criminal court dismissed the appeal and remanded the case to general sessions court presumably, pursuant to local rule in contravention of Tennessee Code Annotated section 27-5-108, requiring a de novo review. De novo review entitles the parties to a re-examination of the whole matter of law and fact, and the court is required to try the matter and render judgment as if no judgment had previously been entered. *Cunningham*, 972 S.W.2d at 16.

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<sup>2</sup> Although not stated in the trial court's order, it appears that the remand was based upon Criminal Court Local Rule 33.01 of the 15th Judicial District which states:

Upon the filing of a General Sessions Appeal of a criminal matter, the clerk shall docket such appeal on the first day of Criminal Court following the appeal. The attorney and the defendant shall appear at the time docketed and thereafter the handling of the appeal shall be same as all other cases in the Criminal Court and subject to these rules. Failure of the defendant to appear upon the date in which the matter is docketed shall result in the appeal being denied and the case remanded back to the General Sessions Court for the judgment of that Court to be final.

### III. Conclusion

Accordingly, the order of the criminal court is reversed, and the case is remanded to the criminal court for further proceedings consistent with this opinion.

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J.C. McLIN, JUDGE